The Madras Law Journal

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THE MALABAR MARRIAGE AND INHERITANCE BILL.

The Malabar Marriage Act (Madras Act IV of 1896) has almost been a dead letter. The reason assigned for this by the framer of the new Bill now before the Legislative Council is that registration is foreign to the instincts of the people of Malabar—we may say in fact of Hindus generally. A stronger reason however in our opinion is the resentment felt by the people in Malabar at the stigma impliedly cast upon them by the Act not recognising the customary unions prevailing in the country as valid marriages. The report of the Commission whose labors resulted in this Act only had the effect of a exasperating the state of feeling of the people. It is therefore not at all surprising to find the people not availing themselves of the provisions of such an Act and one is surprised only at the confidence felt by the Commissioners that the Act would become popular in course of time.

We are constrained to state that it is also surprising to find the Commissioners adopting the view that Marumakkatayam does not recognize the institution of marriage and that the customary forms prevailing among the people *viz.*, the Sambandam, Podamuri etc. referred to by them are not such forms as the law ought to recognise as forms of marriage. The Talikattu Kalyanam is referred to by them as a fictitious marriage. It is not necessary for us to inquire into the origin of this ceremony and whether it had any real significance at any time. At any rate such a ceremony without the legal incidents flowing from marriage is not unknown. Among the Kudwa Kunbi caste in Bombay a custom by which a marriage performed with the usual religious ceremonies was regarded as incomplete and only as a conditional marriage was held valid. See *Bai Ugri* v. *Patel Purushotham Bhudar*[1]. *Sargent* C. J. in delivering the judgment of the Division Court observed: "The Hindu Law leaves it entirely to the parents to marry their daughters, and although, according to strict

1, (1892) I. L. R. 17 B. 410.

Brahmanical law a marriage is complete when the religious ceremony has been performed, there would seem to be no sufficient reason for refusing to recognise a custom at any rate amongst the lower castes, by which such transactions rendered necessary by the paucity of women in the caste, although performed with religious ceremonies are still regarded by the parents on both sides as incomplete and conditional marriages. In the case of *Boolchand Kollita* v. *Janokee*[1] which was a suit like the present for the restitution of conjugal rights, the Calcutta High Court gave effect to a caste custom by which the usual ceremony of marriage was not regarded as binding unless a second ceremony was performed prior to the woman coming to maturity and cohabiting with her husband and by which in, default of such ceremony, the woman might after puberty as the defendant in that case had done, marry another man." The fact therefore that the Talikattu ceremony is performed by every Nair woman can be no bar to the recognition of it as a marriage when it is followed by co-habitation either by the person who takes part in the Talikattu ceremony or by another person co-habitation with whom is followed by a further ceremony. It might be that in times beyond memory polyandry was prevailing in Malabar or the people there did not recognise the institution of marriage as such was the case before Swataketu's time (See the Puranic story referred to in the Mahabharatha and Sacred Books Vol. II pp. xli to xlii) and when the Aryan civilization progressed in the West Coast the Talikattu ceremony was introduced among them by the Aryans to familiarize the people with the institution of marriage as such. That, however, is not relevant for our present purpose as already stated.

The Commission regarded the customary forms of marriage prevailing in the country as no marriage apparently on the ground that the connection is dissoluble at the will of either party. Although the principle of Eugenics might not have found acceptance at the time—the science of Eugenics having been only of a comparatively recent growth—a connection which can be dissolved with the consent of the parties or of one party thereto was and is still recognised as marriage among certain classes of people and the Courts have upheld the same as valid marriages. Thus there are marriages called Putt or Natra recognised in Bombay. A wife can marry according to these forms on getting a *chhorchithi* or writing evidencing a divorce by the first husband or with the concurrence of the caste; See *Rahi* v. *Govind*[2]. The fact that in the commu-

1. (1876) 25 W. R. 386. 2. (1875) I.L.R. 1 B. 97 at pp 114 to 117.

nity to which the parties belong divorce is mutual i. e. at the will of either party can be no disqualification for recognising Sambandhum as a marriage. According to the science of Eugenics there should be no obstacles to the dissolution of a marriage if its continuance will be prejudicial to either or both. We have therefore no hesitation in welcoming the new Bill as its object is to recognise the customary forms prevailing in the country as valid marriages.

Coming to the provisions of the Bill itself we find that S. 1 rightly repeals the old Act. Clause (b) of the section declares the local extent and the persons to whom it will apply. The word 'domicile' used in this connection is ambiguous and unscientific although the word is to be found in the old Act. When it is said that the Bill is intended to apply to the whole of the Madras Presidency we think that all that is meant is to extend the provisions to the Marumakkattayam or Aliyasanthana Hindus *i.e.*, to the followers of such systems and not to others. In the case of those who being such followers reside elsewhere *i e.*, outside the Madras Presidency but within British India we take it that the object of the author is to make the Act applicable there also. In the case of those who reside outside British India and have not changed their domicile the Bill expressly makes the provisions applicable. If by 'elsewhere' is only meant some place in British India outside Madras Presidency the subsequent word 'domicile' may be changed to new residence. In that case, however, it must be observed that even in the case of persons governed by Malabar Law settling within a place in Madras Presidency outside Malabar it is open to such persons to adopt the law prevailing in the place of their new residence. To such persons the Act can have no application and apparently the intention of the author is to exclude such persons from the operation of the Bill. S. 3 declares that Sambandham shall be deemed a valid legal marriage for all legal purposes. At first sight it may be thought that a mere declaratory provision declaring customary forms of marriage as legal marriages would have been sufficient but in view of the provisions of the old Act it is better that the Bill is more specific as regards the subject matter. While the Act declares Sambandham to be a valid legal marriage we think that the Act should also declare the particular effects or consequences flowing from it.

Now as regards the restrictions proviso (*a*) relates to prohibited degrees of consanguinity or affinity. Proviso (*c*) relates to the prohibition as regards the class or community from which a choice

can be made. It declares that if the parties are such as belong to different communities between the members of which co-habitation is not permitted to such community according to custom or usage no valid Sambandham can arise. Proviso (*b*) relates to restrictions as regards persons having already valid subsisting Sambandhams. We think there is no reason for confining the restriction only to valid Sambandhams. If either party is already married whether such marriage be a Sambandham or one regarded as valid marriage under other systems of law such party should be held to be disqualified. If a person subject to another personal law is validly married and he can otherwise validly contract a Sambandham under the customary law of Malabar—we should think that should be a disqualification for him to contract a Sambhandam under the Act. The proviso again only refers to a Sambhandham which would be a valid marriage under the Act and does not refer to a Sambandham under the repealed Act. We think the proviso should also cover Sambandhams under the repealed Act and they should be deemed valid marriages for the purpose of prohibiting persons to contract fresh Sambandhams while the former Sambandham should be in force. Cl. (c) of S. 3 of the old Act covers the above cases and we fail to see why it should be cut down in the new Bill.

NOTES OF INDIAN CASES.

Hira v. Hanji Puma.—I. L. R. 37 B. 295.—We think the learned judges in this case proceeded upon considerations entirely irrelevant and that the real principle has not been correctly appreciated in this as in most other cases. The question whether the marriage is approved or unapproved is not the test laid down by Yagnavalkaya for the succession to the Stridhanam property of a woman devolving upon her husband and his heirs or her father and his heirs. Verse 145 of Yagnavalka's text in Vyvahara Adhyaya says that the Stridhanam of a woman who has no issue goes to her husband in the four forms beginning with Brahma and in the remaining forms it goes to her parents. If she leaves issue it goes to her daughters. Now there are many customary forms of marriage not coming within the eight forms mentioned in the Sanskrit Books and the ceremonies differ variously according to the custom of the locality. All such customary forms and celebrations are valid. The husband and his heirs will take only when the marriage is in one of the four forms beginning with Brahma. The word four is expressly stated in the beginning of the text when the forms of marriage beginning with Brahma are referred to but when the text refers to the devolution

of parents in the remaining forms no emphasis is placed on the word 'four'. It is, therefore, not necessary in order that the Sridhanam may go to the parents that the marriage should be in one of the four unapproved marriages as they are called. The blameworthiness or otherwise of marriage is nowhere indicated either in the text or in any part of the Mitakshara dealing with this question as the test for succession devolving upon the parents or the husband as the case may be. In order that the succession should go to her husband and his heirs the marriage should be in one of the four forms *viz.*, Brahma, Daiva, Prajapathya and Arsha. In the Brahma form of marriage it is essential that the girl should be a maiden or a virgin maiden as it is termed and where a marriage is celebrated according to a form which approaches the Brahma form but the girl does not comply with the requisite of a maiden essential for the Brahma form it will not entitle the marriage thus celebrated to be regarded as one of the four forms beginning with Brahma. It may also be that the marriage thus celebrated cannot be regarded as an Asura form but that does not mean that the husband is entitled to succeed. We cannot, therefore, appreciate the reasoning of the learned judges that the husband and his heirs are entitled. The learned judges seem to admit that it is essential to the Brahma form according to the texts of the Hindu Law that the girl should be a Kanya and that the woman in the particular case they were dealing with was outside that text. It may be that there is something special in Bombay which however has not been referred to by the judges. We need not therefore consider the question whether the reliance on the text of Manu (IX § 196 199) by Nilakanta in the Vyavahara Mayukha leads to a different result. (See Vyavahara Mayukha Sec. X § 29 and 30).

Iswhar Lingo Desai *v.* Dattu Gopal Desai.—I. L. R. 37 B. 427.—This is an instance too often common in this country of the troubles which await a decree-holder in reaping the fruits of his decree. In a suit of 1898 a decree for redemption was obtained. In consequence of a delay in the payment it took nearly five years for the decree-holder to establish his right to execute the decree. When he attempted to execute his decree the right to execute which had been established after his appeal went to the High Court fresh difficulties were thrown in his way at the instance of a person who alleged herself to be the representative of one of the defendants in the litigation which went up to the High Court. Four years elapsed when the decree-holder was relegated to a fresh suit which he brought

in 1907 and it took six years to establish his right to execute the decree again. The only satisfactory feature after all these years and after all these litigations is that the High Court has been able to render justice to him. There can be no doubt about the conclusion. We refer to the case only for the purpose of noting the difficulties in the way of decree-holders realizing the fruits of their decrees and showing to what amount of expense they are put not even a tenth of which can be recovered from their opponents.

Shankar Visvanath Vag *v.* Umabhai.—I. L. R. 37 B. 471.—In this case the Bombay High Court held that the Married Women's Property Act III of 1874 would not apply to Hindus. Although the Subordinate Judge held that the principle of the Act applied to the policy, it was apparently not contested before the High Court that the Act would apply. The Bombay High Court also held in this case that apart from the Act no trust was created. We would only refer to the article in July No. 3 of our journal where the recent decision of the Full Bench of the Madras High Court was discussed—vide page 1 of Journal portion.

Zuleka Bai *v.* Ebrahim Haji Vyedina.—I. L. R. 37 B. 494.—We are not satisfied with the reasoning of the learned judge in this case. The suit is for the recovery of title deeds to land lying in a foreign country. The fact that the plaintiff is also entitled to claim possesion of the land and a suit for that purpose will not lie in British Courts is no reason to deal with the suit as brought as one for land. If the learned judge had held that the suit for the recovery of the title deeds was a suit relating to the land substantially or otherwise that might be a different question. The learned judge relied upon the defendant's denial of the plaintiff's title to the land with reference to the title deeds of which the suit was brought and upon the defendant's denial of the plaintiff's right to possession of land both of which claims could only be enforced in the Foreign Court as a circumstance in favor of the view that the suit was one relating to land. What the learned judge had to determine was whether the title deeds of lands were or were not moveable property within meaning of cl. 12 of the Letters Patent determining the original civil jurisdiction of the High Court. It has been definitely settled that the fact that the land is situate outside the original jurisdiction of the High Court is no bar to taking cognisance under S. 12 of the Letters Patent if the relief is one not relating to land but is one which can be claimed

from the defendant personally. Upon that ground the Judicial Committee upheld the view of the Calcutta High Court that leases of immoveable property situate outside the jurisdiction of the High Court can be set aside when the suit is brought under the original jurisdiction of the High Court. See *Benodhe Behary Bose* v. *Nistarini Dasi*[1].

SUMMARY OF ENGLISH CASES.

In re Bennett: Greenwood *v.* Bennett: [1913] 2 Ch. 318.

Lunacy—Order to pay surplus profits to daughters of lunatic—Death of lunatic before payment—Effect of—Nature of the jurisdiction in lunacy to make disposition.

Under orders in lunacy, the surplus of the profits of a lunatic's estate used to be paid to the daughters of the lunatic. At the death of the lunatic, the committee had certain sums in his hands which had accumulated since the last payment to the daughters. The daughters claimed them. *Held*: they were not entitled. As soon as the lunatic died, there was an end of the jurisdiction in lunacy and the orders in lunacy had no further operation.

The court in lunacy in distributing the funds of the lunatic does what he, if sane, could have been expected to do. Allowances made to daughters etc. are on the same footing as voluntary allowances made by parents. Just as it could not be argued that the children have got a right to any portion of the allowance in arrear or a proportionate part of the allowance to fall due later, the daughters in the case had no right against the administratrix for any portion of the accumulated funds.

In re Magrath: Histed *v.* Queen's University of Belfast: [1913] 2 Ch. 331.

Will—Construction—Legacy—To "Queen's College, Belfast"—Dissolution of, before will—"Queen's University of Belfast" instead, doing some work—Misdescription.

A testatrix gave by her will 3000£ to the "Queen's College, Belfast" to found a scholarship open to the fourth year Medical Students. The will was dated February 16, 1910. But in 1909 the "Queen's College, Belfast" had been dissolved and in its stead Queen's University of Belfast had been incorporated. The new

1. (1905) I. L. R. 33 C. 180 at pp. 191, 192.

University was doing the same sort of work as the former and in the same place. *Held* under the circumstances, the case was only one of misdescription of the legatee. The legacy was intended to go to the institution at Belfast whatever its name and the Queen's University was entitled to the legacy.

In re **West : Westhead** *v.* **Aspland** : [1913] 2 Ch. 345.

Will—Legacy—Contingent on attaining 21 years—Power to apply for maintenance—Other provision for maintenance—Effect of—Interest not payable till legacy becomes vested.

Can the intention that a legacy should carry interest which is presumed where a testator merely gives a future legacy with a power to the executors to maintain the legatee out of the legacy, also be presumed in a case where the testator in addition to such a future legacy makes provision for the maintenance of the legatee out of some other fund? *Warrington* J. held, it could not be presumed.

Hope *v.* **Osborne** : [1913] 2 Ch. 349.

Right of common—Nuisance—Abatement of—Right to—Not, when exclusion not complete—Resort to Courts necessary.

The commoners of a manor have the right to abate a nuisance which wholly prevents them from exercising their right of common. But where the exclusion is not complete and their complaint is only that they cannot enjoy their rights as beneficially as they could otherwise have enjoyed, their proper remedy is to resort to the courts and not to take the law into their own hands.

In re **Hanbury's Settled Estates** : [1913] 2 Ch. 357.

Tenant in fee simple with executory gift over—Waste—Not impeachable for—Right to mining rents and profits.

A tenant in fee simple in possession of real estates with executory gifts over is not impeachable for waste. The question in this case was as to whether a lady to whom her late husband had devised his real and personal estate absolutely " in full confidence that she will make such use of it as he should have made himself and that at her death she will devise it to such one or more of his nieces as she may think fit" in default of such appointment the property to go

to his surviving nieces was entitled to the whole of the rents and royalties under mining leases granted under the Settled Estates Act. His Lordship *Eve* J. held that as she was entitled to the estate in fee simple subject to executory gift over at her death, she was not impeachable for waste and could therefore wholly utilise the rents for herself.

Birchall *v.* Birch, Crisp and Co.: [1913] 2 Ch. 375.

Discovery—Co-defendants—Action by assignee of commission—Defendant's assignor and party liable—Right inter se.

Plaintiff-assignee of a portion of the commission due from the 1st defendant to the 2nd defendant, sued the 1st for the same, making the other party defendant. 1st defendant contended that nothing was due to the plaintiff as damages were due to the 1st defendant owing to mis-representation by the second in the making of the contract. There was no counter claim by the 1st against the 2nd. The question was whether the 1st defendant could have an inspection against the 2nd defendant of the documents admitted by him to be in his possession. *Warrington* J. and the majority in the Court of Appeal held he could not. *Swinfen Eady* L. J. held the other way.

Hewson *v.* Shalley: [1913] 2 Ch. 384.

Will appointing executors—Administration granted in ignorance of—Void ab initio—Alienation—Absolutely void—Subrogation only in respect of payments testator bound to make.

An administration granted in ignorance of a will of the deceased appointing executors is void ab initio and no title passes to any purchaser from such administrator. The only claim that the purchaser might make is in respect of payments that the testator could have been compelled to make, on the principle of subrogation. The case is different where no executors are appointed by the will.

Douglass *v.* Rhyl Urban District Council:
[1913] 2 Ch. 407.

Corporation—Corporate seal—Necessity for—When no statutory requirement—Duty to pay after receiving benefit—Rule as to—Quantum meruit.

Although there may have been a difference of opinion and conflicting authorities, it is now settled that in the absence of an express statutory provision requiring a contract under seal, the requirement of the corporate seal at common law is subject to this exception. Whenever the purposes for which the corporation is created render it necessary that work shall be done or goods supplied to carry such purposes into effect and orders are given at a corporate meeting regularly constituted and having power to make the contracts authorised and the work is done or goods supplied and accepted by the corporation and the whole consideration for the payment is executed, there is a contract to pay implied from the acts of the corporation and the corporation cannot keep the goods or the benefit and refuse to pay on the ground of mere absence of formality or that the fixing of the seal was wanting. The authority for this is *Lawford* v. *Billericay Rural Council*[1].

In this case, the defendants (a corporation) employed the plaintiff an engineer and expert in pier and harbour work to make certain valuation and estimates required by the Local Government Board to whom the defendants under powers in their Special Acts, had applied for sanction to borrow the money required for a proposed scheme of improvement. There was no contract under seal but the plaintiff made the valuation and estimates which the defendants made use of. The scheme was not however proceeded with. There was no statutory provision requiring a contract under seal. *Joyce* J. held applying the rule set forth above, that the plaintiff was entitled to the sum claimed on the principle of *quantum meruit.*

King *v.* Brown, Durant and Co.: [1913] 2 Ch. 416.

Right of common—Right of suit for interference—Destruction of subject matter—Growth of legal right—Prevention of.

A mere commoner i. e. (a person having a right of common) cannot maintain an action against another person having a right of common over the same ground or even against a stranger, for a simple trespass such as walking over the grass of the common but anything by which a commoner's right of common is disturbed by any unlawful consumption or taking away or destruction of the herbage is actionable even when done by one of the persons having an equal right of common over the same waste. A commoner cannot justify any encroachment which really interferes with or prejudices any right of common of his fellow commoner. It is a

1. (1903) I. K. B. 772.

JOTTINGS AND CUTTINGS.

Legal Insanity.—Recent cases have drawn renewed attention to an old anomaly in our system of criminal jurisprudence, namely, the wide divergence between the tests of insanity as understood by medical men and lawyers respectively. The Court of Criminal Appeal has again and again tacitly recognised the inadequacy of legal views on the matter by expressing an opinion that the Home Secretary should investigate separately, with expert aid, cases where the Court itself cannot legally interfere with a verdict imputing legal 'sanity' to a prisoner. The whole difficulty, arises, of course, from the simple fact that judges are bound by the legal decisions and precedents of less enlightened days until the Legislature is pleased to alter the law, whereas medical opinion has recently undergone a revolution upon physiological and psychological phenomena. The result is that the judge must uphold in his summing up the now antiquated views held seventy years ago by Law and Medicine alike. For the legal test of insanity is still that enunciated by all the judges when invited to the House of Lords to express their considered opinion in *Macnaghten's case* (1843). Five questions were there submitted to them, and upon the answers given by all the judges, except Mr. Justice Maule, are based the present day formulas, used by judges when directing juries in criminal trials. In substance, their answers came to this. If a prisoner capable of appreciating right and wrong, commits a crime he is criminally responsible for it, however diseased his mental condition. Even if the acts under the influence of a delusion as to the facts, he is still criminally liable if, supposing the facts to have been as he imagined them to be, his act would have been criminal. No one nowadays defends this principle as good science, and the time has come to eliminate so untenable a theory from our jurisprudence. In practice, every medical expert called as a witness admittedly acts on a totally different theory. Even judges although they must give to juries the correct technical direction in the old formula, often quietly assume in their summing up altogether different principles. The common-sense change which should be made by Parliament is one authorizing juries to act upon their own view of the evidence before them in deciding whether or not the prisoner is really a responsible being.—*Law Journal* 11th October 1913 p. 568.

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INTERNATIONAL LAW ASSOCIATION.

THE CONFERENCE AT MADRID.

After its conference at Paris in May, 1912, the International Law Association has allowed eighteen months to elapse before again assembling. For the first time in the forty years of its history it has visited the country of Spain, which bulks so largely in the early history of the Law of Nations. The names of Francis a Vitoria and Suarez D'Ayala were referred to by more than one speaker at the opening session; and from the many treatises presented to the Congress by Spanish jurists, displaying profound research and critical acumen, it is evident that the Law of Nations is still successfully studied in the Peninsula, though there are two accidental causes for its not being a subject which particularly commends itself to Spanish jurists. One is the difficulty of language: an English, French, or German student is in immediate touch with international developments; to a Spaniard they percolate at second hand. Then Spaniards found International Law of little use against United States aggression in 1898, and do not always pause to reflect that because a knife is not a bayonet it may, nevertheless, be a very serviceable article. Nevertheless, it is evident that if the study of the Law of Nations is not exactly popular in Spain, it is still pursued by the elect with distinguished ability and success.

Dr. Darby took occasion to criticise a proposal which had been put forwad by Dr. T. Baty earlier in the year that, in view of the obvious reluctance of States to submit any and every question in dispute to one and the same sort of tribunal, some means should be devised of meeting the case by providing more august concillators for more important cases. Dr. Darby in pessimistic strain, thought that no sort of areopagus would content nations in these matters, and that the real fact was that they would not at present accept universal arbitration at all of any kind or description. As regarded the question of military compulsion to enforce the carrying out of arbitral awards, he regarded such a proposal as essentially inconsistent with peace principles. The analogy of the suppression of private war by a central authority is delusive.

An exceedingly brilliant and suggestive paper was read by Dr. Hartzfeld (Amsterdam) on the tendency of the Hague Tribunal to compromise instead of rendering a judgment in favour of one side or the other. Thus in the Dogger-bank Commission of Inquiry it

was found that the Russians were not justified, but not to blame, in the *Carthage* and *Manomba* cases, that Italy was wrong, but that she need make no substantial amends: in the *Savarkar* case, that Savarkar should not have been taken, but need not be given up. It is well known that, if an arbitrator obviously exceeds his functions and compromises where he ought to decide, the award may be repudiated. Thus the King of Holland's decision in the *Maine Boundary* case was disregarded, for it set out a boundary which was one not claimed by either party. But an arbitral decision may well be essentially of the nature of a compromise, without seeming formally to be so. Dr. Hartzfeld propounded the novel suggestion that such a decision is of a higher judicial order than a decision crudely declaring one party to be right and the other wrong. The old Roman law according to which it was fatal to claim 105*l*. if one's sustainable claim were for 100*l*, only was surely less accurate and scientific than the latter law which admitted a compromise decision recognising the plaintiff's right to the 100*l*. It will be observed, however that the tendency of the Hague Court is not, as in such a case, to balance two legal contentions, but to oppose to legal rights on the one hand claims of a purely moral nature on the other. In the discussion which ensued this consideration was hardly sufficiently kept in mind by the speakers.

On the second day (October 2) a paper by Mr. George Whitelock (Baltimore), explaining the terms of the American model law on Bills of Lading was laid on the table. The effect of this statute—and it is adopted in Alaska, Connecticut, Illinois, Iowa, Louisiana, New York, New Jersey, Maryland, Massachusetts, Ohio, and Pennsylvania—is to make bills of lading negotiable on the same footing as bills of exchange, independently of all questions regarding the goods. Mr. R. Timperley (Newcastle) then reported the satisfactory results of the year's work of the committee charged with securing the passage of legislation by European and American states on the lines which obtain in England regarding the carriage of heavy timber as deck load in the winter months. Mr. Sansy Castano who read a paper on the same subject expressed the wish that until the various States should come to some common understanding upon the subject, Great Britain and Spain should suspend their legislative restrictions; but the conference thought this much too drastic a means of pressure. The report of the committee shows that there is a good prospect of legislation being promoted which will result in a general increase of safety for mariners engaged in this trade. Mr. Sydney Buxton has expressed the favourable senti-

ments of his Board. The American and German underwriters are, as was observed by Dr. Bruders (Secretary of the International Association of Marine Underwriters, Berlin) well disposed; and the present state of affairs, in which deck-cargo, prohibited in Britain simply goes to Antwerp or Amsterdam, is (assuming the danger of these cargoes) really absurd. It by no means follows that the British regulations are ideal.

The subject of 'The Effect of War on Private Contracts' was next introduced in four papers, of which that of Prof. Van Eysinga (Leyden) dealt with the subject quite generally, remarking that the Hague Conventions dealt only with the military aspect of war, and that its civil consequences had largely been neglected. The other three dealt with the question of the insurance of belligerent vessels in war time. Mr. Leslie Scott. K.C., M.P., explained the English cases on the point; Dr. Sieveking (Hamburg) elaborately supported the logical basis of the English interdiction of contracts with the enemy; and Dr. Bruders opposed to the modern German view that attacks on commerce are not necessary for success in war, and not justified. As Mahan has shown, the objective of the navy should be the enemy's navy, not his merchantmen. Yet Mahan thinks that commerce-destruction may be necessary afterwards, to bring the defeated state to terms. This seems a lame conclusion for most states can carry on their commerce overland, and at all events, in neutral ships. Dr. Niemeyer and Dr. Lind supported the views of Dr. Bruders; and it was finally agreed, after an animated discussion to adjourn the question to a future Conference.

Two papers were read on 'Extradition' One, by Professor Van Hamel (Amsterdam) provoked some dissent. It more and more frequently happens that States extradite alleged criminals without going through the formalities prescribed by treaty, and to facilitate matters they obtain from the accused a formal waiver of his rights (if any) under the treaty. Sometimes, again as in *Rex* v. *Governor of Brixton Prison* [(1911) 2 K. B 82] extradition is accorded without the observance of treaty exigencies, and without any waiver Is this legal? It was unfortunate that Professor van Hamel was not present in person to answer the objection raised on the grounds of practical convenience; but there is the obvious answer that law is not an affair of practical convenience. Any sort of injustice could be covered—*letters de cachet* were covered—by that plea. A kindred subject was the 'International Treatment of Anarchists,' as to whom (if they ceased to be academic and took to violence) Senor Peman (Dean of the College of Advocates, Cadiz) was of opinion

that mutual extradition ought to be granted, and that it should extend even to the subjects of the State from which it is demanded. —*Ibid.*

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JURISDICTION IN DIVORCE.

The final report of the Committee on Jurisdiction in Divorce which, signed by Mr. Justice Phillimore, was presented at the Madrid meeting of the International Law Association contains the further replies which the commitee have received to the *questionnaire* from Brazil, Finland, Nicaragua, Spain, Sweden, and Servia, and a second, reply from Norway.

BRAZIL.

In case of marriage under the legal age nullity can be demanded by the parties within six months after the celebration or by their legal representatives, and can be opposed by the natural ascendants or descendants or relatives by affinity up to the second degree, or at the instance of the Public Minister. In actions for separation the guardian of orphans must be cited; for nullity a special guardian is necessary. The courts have jurisdiction to divorce foreigners after two year's residence. Appearance by defendant is equivalent to personal service and if absent a curator must be appointed to represent him.

FINLAND.

Divorce for causes other than adultery and malicious desertion are not granted by the Courts, but by special dispensations of the Sovereign through the Department of Justice or Imperial Senate. It is not settled whether the Courts have jurisdiction to divorce domiciled foreigners. There are no legal stipulations determining how a foreigner may acquire domicile, and the law does not recognise legal domicile. The legal position of Finns domiciled and divorced in a foreign country seems to be unsettled, but such divorces have been recognised.

NICARAGUA.

In Nicaragua, divorce by mutual consent is recognised under certain restrictions. The wife cannot contract a fresh marriage within 300 days after the divorce. But if she does, the second marriage is not void, but she incurs the penalties of the Penal Code. The children born within 300 days after divorce and 180 days after the second marriage are legitimate. The Courts take jurisdiction to divorce foreigners who are domiciled, or if not domiciled who are actually found in the country or where they expressly submit to

the jurisdiction, or impliedly by taking part in the action without raising the question of jurisdiction. Foreigners are considered domiciled when they have opened a house, taken up three years' residence, or inscribed themselves on the Register of Foreigners. There is the right to divorce after two years' judicial separation without reconciliation. Divorce by mutual consent can only be had twice. Decrees of divorce, separation, or nullity must be reviewed by the Court of Appeal. These reviewed decrees must be published in the official newspaper and recorded in the Register of Civil Status-a most excellent provision. Without this they are void as to third persons, civil status being proven by the entires in the register. Reconciliation puts an end to judicial separation and a decree to that effect, must also be similarly registered. The Courts have jurisdiction of the cases of domiciled foreigners where one of the parties is either a national or a domiciled foreigner. The competent Court is that of the defendant's domicile though parties may expressly or tacitly submit to the jurisdiction.. There is a tacit submission by taking part in the action without objecting to the jurisdiction. The Code provides for dissolution by mutual consent of a marriage celebrated abroad whether of nationals or foreigners, by applying the *lex loci celibrationis.* In actions for divorce by mutual consent the parties themselves must be present. Foreign judgments are given the effect provided by treaty; if no treaty, reciprocity is applied, and the judgments are executed if they are authenticated in accordance with Nicaraguan and the Foreign law. Such judgments as to status of their nationals is part of their personal law. The Public Minister must be made a party to divorce and nullity suits, and to those for separation where there are minor children, and in the proceedings for review by the Court of Appeal. There is marriage by 'proxy' by means of a duly authorised Power of Attorney. If the power is in fact recorded (though unknown) at the time of the marriage, it is void.

NORWAY.

There are 15 causes for divorce, including epilepsy at the time of the marriage; sentence of three years' penal servitude or for habitual vagrancy; addiction to drink; begging or neglect to support family (by the King); insanity for three years with 'no fair chance of recovery'; one year's judicial separation and both parties request divorce. Decrees granted by the King or Supreme Court of Appeal are final; others are final when the time for appeal has expired and no appeal is taken. If the ground for divorce is a crime, the Criminal Court can combine with the sentence a decree of

divorce. The Courts exercise jurisdiction when both parties were domiciled in Norway and one leaves the country; where two Norwegians are domiciled abroad and one returns, but not if both are domiciled abroad. There is no fixed time for acquiring domicile. If defendant's residence is unknown the writ is served by public advertisement, as it is in the United States. Foreign decrees are recognised, unless by Norwegian law the case should be submitted to their Courts. The significant remark is made that there is no King's Proctor, and neither the King nor the Courts have any 'control' (assurance) 'that the alleged cause for divorce is real.'

SPAIN.

In Spain there are 'canonical' marriages for Catholics who can procure divorce only in accordance with the regulations of that Church, the civil effects of which must be enforced by the ordinary courts; and 'civil marriages' (for non Catholics) which can only be dissolved a *mensa*, not *a vinculo*. Perpetual imprisonment is a ground for divorce. Foreign judgments are given the recognition provided by treaty, and in the absence of treaty the reciprocity rule is applied, but decrees divorcing Spaniards to be valid must be confirmed by the Spanish Courts, and be for causes allowed by Spanish law. There is always jurisdiction to divorce resident nationals, and foreigners after two years' residence together with declaration of intention to become domiciled, and after ten years' residence without declaration. Public advertisement of a writ against a non-resident defendant is provided for.

SWEDEN.

Some of the grounds for divorce are 'mental disability' without lucid interval lasting three years, and with no hope of then being re-established; sentence of death; loss of civil rights; two years' penal servitude; for drunkenness; placed under guardianship because of waste of money; living apart for one year under order for judicial separation. The King has power (without any certain limit to his right) to grant divorce. There is separation at the request of one party, there being 'animosity and discord.' This is the ordinary preliminary to a divorce by the King. Epilepsy is a ground of nullity. Sweden is a signatory to the Hague Convention, and applies the same principles to subjects of countries not signatories. The Courts take jurisdiction (with restrictions) of nationals domiciled out of Sweden. They may petition the King for divorce if there is no competent Court. The Courts grant divorce where the ground is a crime, though it is committed abroad. The law as to nullity for causes existing abroad is not settled. There is registration of

'residents,' and domicile of those not resident is a question of fact. Foreign decrees divorcing residents are recognised if for causes recognised in Sweden. There must be ratification of foreign decrees divorcing foreigners before a fresh marriage can take place in Sweden.'

The Committee, after summarising the recommendations of the Royal Commission on Divorce, express the belief that they have gathered in the three reports they have now prepared a mass of useful material never before collected. 'But the result of our inquiries is that, there being such an extreme divergence among nations as to the grounds of divorce, as to jurisdiction and procedure and the effect to be given to foreign judgments of divorce: we do not see our way to make any recommendations which will be likely to gain present adhesion.'—*Ibid.*

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The New Lord Chief Justice.—The appointment of Sir Rufus Isaacs as Lord Chief Justice of England has been generally acclaimed as an act of justice due to his distinguished talents and a well deserved recognition of his commanding claims to high judicial office. It is admitted on all hands that he possesses all the natural and acquired faculties which go to the making of great Chief Justices, and there are few who would withhold from him the proud title to preferment—*omnium consensu capax imperii.* But to the profession the elevation of this plain merchant's son, born of an ancient but alien race, to the seat of Mansfield, of Ellenborough, and of Cockburn is specially welcome for the proof it affords that of all careers that of the Bar of England is the one most open to all the talents. The new Lord Chief Justice may be depended upon not only, according to his oath, to 'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will,' but to apply his great administrative powers to the speedying of justice. His aim, if we mistake not, will be to secure that some approach may be made under his chiefship to the ideal, which he himself has proclaimed, that the Courts shall be always open and ready to settle disputes and remedy grievances whenever, and as soon as, they are presented by any of the King's subjects.—*Ibid.* Oct. 25.

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The New Law Officers.—Sir John Simon, who has, in the natural course of events, been promoted from the office of Solicitor-General to the Attorney-Generalship, possesses a capacious and cultured mind and a strong and attractive personality which will enable

him to fill with distinction, at the almost unprecedentedly early age of forty, the high position of leader of the English Bar. He fills so great a place in Parliamentary life that his inclusion in the Cabinet in accordance with the precedent created in the case of Sir Rufus Isaacs, is difficult to criticise, but we still hope that a practice which by emphasizing the political character of the Attorney-General's office, tends to diminish its professional prestige will not be continued. But there is no member of the profession who does not cordially congratulate Sir John Simon upon attaining the position of leader of the Bar, which he is so eminently qualified to fill. In accordance with expectation, he is succeeded in the Solicitor-Generalship by Mr. Buckmaster, who has won a great reputation at the Chancery Bar, and who is justly regarded in the House of Commons as an effective speaker, whose political zeal never encroaches upon his fair-mindedness. Not since the late Sir John Rigby ceased to be Attorney-General nineteen years ago has a Chancery lawyer been a Law Officer. It is a very distinguished list of Law Officers who have come from the Chancery Bar in modern times, including, as it does, the names of Cairns, Roundell Palmer, Jessel, and Davey. The new Solicitor-General will be no unworthy addition to the number.—*Ibid.*

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Contempt of Court in a Head-line.—The gist of the decision of the Divisional Court last week in the case of the *Pall Mall Gazette* is that a head-line in a newspaper may amount to a contempt of Court, as being calculated to interfere with the course of justice, although there be nothing in the printed matter to which the head-line refers which could afford sufficient ground for complaint. The *Pall Mall Gazette* had grouped together the head-lines relating to a writ in Chancery, issued by shareholders against the managing director of the Marconi Company (for libelling whom Mr. Cecil Chesterton was then undergoing his trial) with the other directors, in respect of certain dealings with American shares in which the Company was interested, and the head-lines referring to the criminal trial. It was said, on behalf of the *Gazette*, that newspapers frequently group together the head-lines relating to the same or kindred subjects ; but the Court held that this practice could not justify the combination of the head-lines relating to the civil proceedings and to the report of the criminal trial, as it might tend to prejudice the minds of the jury trying the case. No doubt the head-lines may influence the reader, especially as in these days of hurry and hustle many men only peruse the contents of their newspapers

in a very perfunctory fashion. But the prosecution was not, in fact, prejudiced, a conviction being secured against Mr. Chesterton, and, the gravamen of the offence being the mixing up of the criminal and civil proceedings as if they had some real connection in fact, the opinion of the Court was sufficiently marked by an order against the respondents to pay the whole costs of the proceedings—a heavy enough punishment, even if there was no wilful contempt.—*Ibid.*

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The Duty of County Court Judges.—It rarely happens that an order is made against a County Court Judge requiring him to hear and determine a remitted action, as was done on Monday in *The King* v. *Judge Mellor*. The reason of the learned Judge's refusal was that his Court was congested with local cases, and that the cause ought to have been remitted to the Liverpool Court, where, if the action had been instituted in a County Court, it would in the ordinary course have been commenced. The judgment of the Divisional Court was based on the unimpeachable ground that a County Court Judge must obey an order of the High Court. Such an order may press hardly on a County Court Judge whose lists are heavy; but he ought to do his best to cope with the work that falls to his lot. A public and vigorous protest against unfair treatment in the matter of remitted actions may be justifiable, and would probably not be without effect—a pointblank refusal to try a case is a denial of justice to the litigants. The view that the Divisional Court took of the matter is emphasized by the fact that they ordered the learned County Court Judge to pay the costs of the proceedings. Such an order against a respondent occupying a judicial position may be unusual; but there is a precedent for it in the case of *Blades* v. *Lawrence* (1874), in which the Court of Queen's Bench ordered the costs of a similar application to be paid by the Judge of the City of London Court.—*Ibid.*

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The New Lord Chief Justice.—With the cordial approval, not only of the members of the legal profession, with whom he is universally popular, but also of the public, who have long learned to appreciate his legal attainments and manly qualities, Sir Rufus Isaacs has been appointed to succeed Lord Alverstone in the Lord Chief Justiceship, the highest purely judicial office in the land. During the past one hundred years the office of Lord Chief Justice has had eight occupants—Ellenborough, Tenterden, Denman, Campbell, Cockburn, Coleridge, Russell, and Alverstone—and not one of these distinguished men brought to it a larger store of profes-

sional and personal gifts. None of them, at any rate, reached it through a worthier or more romantic career. It is through sheer hard work, combined with forensic gifts of the highest order and personal qualities of a most attractive kind, that Sir Rufus Isaacs has won his way to the great position to which he has been appointed at the early age of fifty-three. He belongs to a race which has given the world some of its finest legal intellects. Sir George Jessel, whose name stands out pre-eminent in the list of modern Masters of the Rolls, was the first Jew to become an English Judge, and Sir Rufus Isaacs, who has been appointed to 'the chair of Mansfield,' is the second member of his race to become one of His Majesty's judges.

About the early days of the Lord Chief Justice there was little, apart from his determination and independence, to suggest the achievement of his later years. A son of the late Mr. Joseph Isaacs, a member of a well-known London firm of fruit merchants, he was born on October 10, 1830, and was educated at University College School, at Brussels, and at Hanover. A spirit of adventure led him, soon after the completion of his schooldays, to abandon the comfortable prospect of entering his father's office, and to obtain a berth as 'boy' on a Scottish vessel, the *Blair Athol,* trading to Rio de Janeiro with coal. A year or so later, after he had endured, none too willingly, the hardships that belong to life before the mast, he went to Magdeburg as agent for his father's firm, and in this position, which he occupied for about two years, he acquired a knowledge of mercantile life which was, no doubt, of c[illegible]iderable use to him when he started his career at the Bar. His [illegible]quent experiences as a member of the Stock Exchange, th[illegible]y did not immediately make for success, were equally val[illegible]m when he adopted the profession in which he was des[illegible]o eminent a place. It was in 1887 that, reading wit[illegible] son Walton, he was called to the Bar at [illegible] a certain experience of County Court wo[illegible] into the foremost rank of the Junior Ba[illegible] years after he was called, he was appoin[illegible] his career was extraordinary in its rapidi[illegible] leader lay chiefly in the Commercial Co[illegible] Walton, then the leader of the Court, [illegible] It was in 1900, when Sir Edward Carso[illegible] General occasioned his withdrawal fro[illegible] Courts, that the new Lord Chief Justi[illegible] ing position at the Bar which he showe[illegible]

hold. His Parliamentary career began in 1904, when he was returned for Reading, the constituency for which he has continued to sit. His first appointment as a Law Officer was in the early part of 1910 when, upon the promotion of Sir Samuel Evans to the presidency of the Probate, Divorce and Admiralty Division, he became Solicitor-General. Some six month's later, upon the appointment of Sir William Robson as a Lord of Appeal in Ordinary, he succeeded to the Attorney-Generalship, his tenure of which will always be notable because he was the first occupant of the office to be made a Cabinet Minister.

These are the main facts of the new Lord Chief Justice's career. The qualities by which he has gained so high a place in the most competitive calling in the world may be stated less baldly Sir Rufus Isaacs did not achieve his forensic success by any extraordinary gifts of eloquence. He has not had at his command the polished rhetoric of a Coleridge or the passionate oratory of a Russell. Not that he lacks the gift of impressive speech. Lord Bowen once described Russell as an 'elemental force,' and there have been occasions calling for some passionate note on which the phrase might not inaptly have been applied to Sir Rufus Isaacs. As a speaker, however, he has, except on very rare occasions, been content to be lucid rather than eloquent, persuasive rather than dazzling.

'Though deep, yet clear ; though gentle, yet not dull ;
Strong without rage ; without o'erflowing, full.

His real strength as an advocate has lain in his swift and easy grasp of facts, in his unerring sense of what is essential and tactful, and in his remarkable [illegible]ers of cross-examination. No advocate of modern times has show[illegible]dier skill in the handling of witnesses. Others may have bee[illegible]amatic in their methods, but none has used the art of cr[illegible]on more effectively as a means of eliciting th[illegible]vocacy, whether in addressing a jury in a [illegible]g an important point of law before a [illegible] wholesome disregard of the pedantic [illegible]s fought on the large points rather than [illegible]ted his cases with so fine a sense of [illegible]iumphed, even the 'ranks of Tuscany [illegible].'

[illegible]ns of the new Lord Chief Justice have [illegible]e has displayed a *camaraderie* which [illegible]ular with all ranks of the profession. [illegible] his enormous practice has been most [illegible] and sense of comradeship, appreciated

by the humblest junior no less than by his nearest rival, have never deserted him. Unlike the Serjeant in the 'Canterbury Tales,' he has seemed less busy than he was, and has always found time for those little touches of intimate courtesy which make a great leader of the Bar so popular with his fellows. The affectionate regard in which the new Lord Chief Justice is held by the Bar has frequently been expressed by its leaders. Speaking at a dinner given in honour of Sir Rufus Isaacs when he was appointed Attorney-General Sir John Simon used these words: 'It is his warm-hearted willingness to be friendly to his juniors, more than even his splendid qualities of intellect, which has caused his appointment as head of the profession to be welcomed by every member of the Bar'. His doughtiest opponent, Sir Edward Carson, who was present on the same occasion, observed that Sir Rufus had always preserved the highest traditions of the Bar of England, and that, though he hit hard, he never hit below the belt. 'The surest way of finding out whether a man is a good fellow,' Sir John Holker once said to Lord James of Hereford, 'is to see whether, after a hard day's fighting at *nisi prius*, you want to walk back from Westminster to the Temple with him.' Sir Rufus Isaacs never had an opponent who did not desire to walk homewards with him. The warm tribute which Sir Edward Clarke paid to Sir Rufus Isaacs at the annual meeting of the Barristers' Benevolent Association is so fresh in the memory of the profession that it need not be further recalled. The high regard in which Sir Rufus Isaacs has been held by the Bench was fitly expressed by Lord Sumner of Ibstone at the recent Hardwicke banquet, when he described him as having uniformly showed at the Bar 'the ardour of an athlete and the spirit of a sportsman.' The possession of the qualities to which these tributes have been paid—the unremitting industry, the large knowledge of legal principles, the ready grasp of facts the innate sense of fairness, the serenity of temper and the dignity of demeanour which Sir Rufus Isaacs has always displayed at the Bar—makes it certain that he will worthily maintain the highest traditions of the historic office which he now fills.—*Ibid.*

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A tribute to Lord Alverstone.—In a Court presenting a notable array of judges and members of the Bar, the new Lord Chief Justice was sworn in on Tuesday morning. The Lord Chancellor and the Master of the Rolls were among the judges present, and Sir John Simon, the new Attorney-General, and Mr. Buckmaster, the new Solicitor-General, and Sir Edward Clarke were among the K.C.'s. Immediately upon the Lord Chief Justice's arrival Master Kershaw, King's Coroner, and Master of the Crown Office, handed to his lord-

ship a card on which were printed the two oaths which every judge is required to take, one being the oath of allegiance and the other the oath of faithful service. Stepping forward, the Lord Chief Justice, upholding a Testament, recited in clear tones the words of the oaths as follows, everybody meanwhile standing: 'I, Sir Rufus Isaacs, swear by Almighty God that I will be faithful and bear true allegiance to his Majesty King George V., his heirs and successors, according to law. So help me God.' 'I, Sir Rufus Isaacs, swear by Almighty God, that I will well and truly serve our Sovereign Lord King George V., in the office of Lord Chief Justice, and I will do right to all manner of people after the laws and usages of this realm without fear of favour, affection or ill will. So help me God.' The Attorney-General formally moved 'that the oaths now taken be recorded,' whereupon the Lord Chief Justice, now fully inducted to the office, responded 'Be it so, Mr. Attorney.' While all in Court, including the Lord Chief Justice, remained standing, the Lord Chancellor, who was seated, delivered a short oration, first giving a welcome to the Lord Chief Justice and passing on to pay a tribute to Lord Alverstone, in which the Attorney-General subsequently joined.

THE LORD CHANCELLOR: It is in accordance with precedent that I, as the titular head of the Judiciary, should say a few words on this occasion. The Bench and the Bar are assembled here to witness the introduction of the new Chief Justice of England, and to take farewell of one whom I have known long, and whom illness has prevented from remaining with us. I will speak first, in the few sentences I have to say, of the new Lord Chief Justice of England. Some of us have known him intimately for a quarter of a century, some of us still longer at the Bar and on the Bench. There is no relationship more searching, no relationship in which more intimate knowledge comes of a man with whom you are brought into the daily contact of legal life. To the commanding grasp of his profession in its various branches he adds other qualities. It is not often that one has such a combination of mastery of the law with keenness in dealing with facts as one finds in Sir Rufus Isaacs. But, more than that, we of the Bench and we of the Bar get to know a man, and we have known him during these years in that intimate relationship of which I have spoken as a man whose highest desire it has been to do right between man and man. We have known him as one of the highest honour and of the highest desire to seek out and ensue truth whenever the truth may be ensued. I wish to add a few sentences about his predecessor, and it is difficult for me to do so without emotion.

During the time I have held my present office I have been brought into close contact with Lord Alverstone. His helpfulness to a new Minister is something I shall always bear in most grateful recollection. He is a man of vast experience, with unrivalled knowledge in law and in business, and we cannot but feel that his passing from active life amongst us is a great loss to the nation. But my hope is that, with rest, we may not wholly lose the benefit of his services. His Sovereign has accorded him a signal mark of recognition—recognition which was the least that was due to him in the step in the peerage which is about to be his—and my own hope is that after an interval we may again see him in the Supreme Tribunals of the country, where he has already, from time to time, given us distinguished assistance. Be that as it may, I know I am expressing the feeling of all here in wishing him happiness and tranquillity in his life.

THE ATTORNEY-GENERAL: The Bar desires to associate itself in the fullest measure with the sentiments to which your lordship, speaking for the Bench, has given expression. We tender our respectful and sincere congratulations and good wishes to the new Lord Chief Justice. We deeply regret that long illness should have overtaken Lord Alverstone, and that he should be laid aside from the work which he has so long discharged with such dignity and distinction. The inactivity which ill-health involves must be doubly wearisome to one whose energy has been unbounded, and to whom hard work has been second nature. There are many of my learned friends in this Court who could speak with longer experience and more authority than I of Lord Alverstone's wonderful record of achievements at the Bar. Here and to-day, in the Lord Chief Justice's Court, where we greet his successor, we think chiefly of the long and honourable discharge of the great office which Lord Alverstone held for thirteen years. We think of his unchanging devotion to his public duties, of his single-minded pursuit of justice, of that patience which he always displayed in examining the fact of a case, and of that promptitude which a business community demands if justice is not to be denied. In the Court of Criminal Appeal he has created out of the mere dry bones of an Act of Parliament a great institution, which offers to any man who has been unjustly condemned the chance of re-establishing his position, without interfering with the swift retribution of punishment of the guilty. And there are many in this Court who, when they think of Lord Alverstone, will always remember the unfailing kindness, the unfailing generosity and encouragement he has shown to men struggling at the foot of the ladder which he has so brilliantly ascended. My brethren at the Bar and I rejoice to hear that your lordship holds out some

prospect that Lord Alverstone, in the House of Lords or on the Privy Council, may hereafter, given better health, be able to put his great judicial powers at the service of the State. And we all trust that the demonstration of admiration and sympathy which this crowded Court has displayed will give to Lord Alverstone some consolation at the moment when he has laid down the office to which he has devoted so large a part of his life.

Upon the conclusion of Sir John Simon's speech the judges filed out of Court, and the Lord Chief Justice began the trial of his first action, in which, since it related to a stockbroker's action, he was immediately at his ease.—*Ibid.*

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Law Lords in the Appeal Court.—Not only did the Appellate Jurisdiction Act strengthen the House of Lords and the Judicial Committee by providing for the appointment of two additional Lords of Appeal in Ordinary; it also strengthened the Court of Appeal by enabling the Lords of Appeal to assist that tribunal when their help is desirable. Formerly, though ex-Lord Chancellors and puisne judges were capable of sitting in the Court of Appeal, the Lords of Appeal in Ordinary were unable to come to the Lord Justices' aid. As a result of the removal of this anomalous disability a third Court of Appeal has been constituted during the present week, in which Lord Parker and Lord Sumner have been sitting. How necessary it was that this assistance should be given is shown sufficiently by the fact that two Chancery appeals before the third Court on Wednesday had been in the list since March. Another section of the Court of Appeal, in which King's Bench appeals were being taken, had before it on the same day three appeals which were entered nine months ago. The assistance of the Law Lords will, it may be hoped, enable the Court to permanently avoid a condition of things in which litigants have to submit to such mischievous delay.—*Ibid.* Nov. 1.

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The Court of Criminal Appeal.—The sitting of this Court on Monday was memorable as being the first at which the new Lord Chief Justice presided. For the attitude of the Court of Criminal Appeal towards cases which come before it is influenced to a certain extent by that of its presiding judge, and a somewhat greater readiness to reduce sentences was shown by the new Lord Chief Justice. In two cases sentences were reduced, and in two other appeals the convictions were quashed.

In one of the appeals against sentence, *Rex* v. *George Bruce* (October 27), the reduction of sentence indicated no new departure. Bruce had been convicted of stealing brass taps and sentenced to nine months' hard labour at the London County Sessions. At that date his record was unknown, and since he had persistently refused to assist the police by giving them any information about himself the Chairman seems to have not unnaturally assumed that he had a bad career to conceal. After conviction, however, the police discovered various facts to his credit, and counsel for the Crown very properly brought out those facts upon prisoner's appeal against his sentence. The discovery of new facts favourable to the defence has always been treated as a ground for reducing a sentence (*Rex* v. *Francis,* 1 Cr. App. R. 259 ; *Rex* v. *Ettridge,* 2 Cr. App. R. 62, 66 ; *Rex* v. *Bradshaw, Beacham and Williams,* 6 Cr. App. R. 222) ; and the Court followed these precedents in altering the sentence to one of three months' hard labour.

In the other appeal against sentence, *Rex* v. *John Martin* (October 27), a new precedent was created. The appellant had been tried at Bristol City Sessions, had pleaded guilty to two indictments for larceny and receiving, the goods in one case being valued at fourteen shillings and in the other at fifteen, and had been sentenced to five years' penal servitude. His record was extremely bad. Where the goods stolen are of small value, and the prisoner's record shows no very recent previous crime or habitual course of crimes, the Court has often interfered with a long sentence on the ground of excessive severity ; but hitherto, we believe, it has not done so when the record is indisputably very bad. In the present case, for the first time, the small value of the articles stolen has been treated as a sufficient ground on itself for reducing a sentence of penal servitude. The substituted sentence passed—one of eighteen months' hard labour—was, however, severe enough.—*Ibid.*

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The Resignation of Lord Alverstone.—It is now definitely announced that Lord Alverstone has resigned the office of Lord Chief Justice, which he has occupied for 13 years almost to a day. It was on October 22, 1900, after filling the position of Master of the Rolls for a few months, that he succeeded Lord Russell of Killowen in the chair of Mansfield, Ellenborough, and Cockburn. To the judicial qualities he has displayed in his high office, as well as to the personal attributes which have made him so widely popular, we pay a full tribute in another column. It is sufficient to say here that no occupant of the Bench ever won in a larger measure the

cordial regard of the profession, and that no gap in the judicial ranks occasioned by ill-health has been more deeply deplored. It was Lord Alverstone's fortune, as Sir Richard Webster, to hold the office of Attorney-General for an unprecedently long period, and it would have been most gratifying to the profession if his tenure of the Lord Chief Justiceship had acquired the same distinction. As we go to press no official announcement of the appointment of his successor has been made, but it is stated that Sir Rufus Isaacs will become Lord Chief Justice in his place, that Sir John Simon will succeed Sir Rufus as Attorney-General, and that Mr. Buckmaster, K. C., will be appointed Solicitor-General. All these appointments would receive the full approval of the whole profession.—*Ibid.* Oct. 18.

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The New Judicial Appointments.—Most prominent among the Judicial appointments which have signalised the opening of the new legal year is the promotion of Lord Justice Hamilton to the office of Lord of Appeal, and it is an appointment which will be welcomed in all parts of the King's dominions. The promise to appoint additional 'judges of the finest quality' to complete the re-modelled tribunal of final appeal in accordance with Lord Haldane's scheme is further carried out by the transfer of the head of the Scottish judiciary to the House of Lords. Lord Dunedin and Lord Hamilton will add greatly to the strength of the ultimate tribunal in both its branches. Sincere congratulations will be extended to Mr. Justice Phillimore on his elevation to the position of a Lord Justice, and it will be generally recognised that, apart from other claims, his special services as Judge in Bankruptcy have entitled him to this promotion above some of his seniors in office. The judgeship in Bankruptcy has nearly always been a stepping stone to the Court of Appeal, and the profession will watch with interest the developments which are to be expected when the report of the Judicial Commission appears dealing with the proposal to transfer this work to a Judge of the Chancery Division. The vacancy in the King's Bench Division created by Mr. Justice Phillimore's elevation cannot be filled up till Parliament meets. An Address to the Crown must be passed in accordanee with the absurd provision by which, until appropriate remedies are found for the delay in justice, the King's Bench Division is to be kept constantly in check—to the great detriment of suitors—by the necessity of such an Address on every fresh appointment.—*Ibid.*

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The Late Sir Ford North.—So long had Sir Ford North ceased to take an active part in legal affairs that the news of his

death, though received with sincere regret by the older members of the Chancery Bar, has not created an intimate sense of loss. It is nearly fourteen years since he retired from the Bench. For a short period he sat not infrequently as a member of the Judicial Committee, but, unlike Sir Edward Fry and Sir Robert Romer, he refrained from utilising any part of his well-earned leisure in taking part in public inquiries, and his name rather faded from remembrance. His judicial career began in unfavourable circumstances which might have permanently disturbed a weaker man. Essentially a Chancery lawyer of the old school, with a pedantic regard for old cases and procedure, he was chosen to personify the fusion of Law and Equity by serving as a Common Law judge. The experiment, though signally successful in the case of Lord Lindley, was a disastrous failure in the case of Sir Ford North, and the lack of worldly knowledge and tact which he displayed on circuit was, no doubt, responsible for the discontinuance of the doubtful practice of appointing Chancery lawyers to do Common Law work. In the Chancery Courts, when he returned to them, his legal learning and painstaking industry found their proper sphere. His methods were exceptionally slow. He sought to verify every statement that was made to him, and was apt to exhibit some impatience towards counsel who proceeded more quickly than he desired. A strange distrust in his own powers prevented him from coming to a conclusion quickly, and on more than one occasion his habit of reserving his judgments for unreasonable periods was the subject of criticism in the House of Commons. But even his defects all leaned to virtue's side, for they were but expressions of his desire to do justice. The members of the Chancery Bar who practised before him never failed to appreciate the high qualities which, with some shortcomings, he brought to the discharge of his judicial duties.—*Ibid.*

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The New Lords of Appeal.—Lord Dunedin has, under the provisions of the Appellate Jurisdiction Act, been appointed a Lord of Appeal. Andrew Graham Murray, who succeeded the late Baron Kinross as Lord President of the Court of Session in Scotland in 1905, when he was raised to the peerage, was born in 1849. Educated at Harrow and Trinity College, Cambridge, where he graduated in 1872, he was called to the Scottish Bar in 1874, became Sheriff-Principal of Perthshire in 1890, and was made Solicitor-General for Scotland in 1891. Later in the same year he was returned to the House of Commons as the Unionist member for Bute. On the return of the Unionist Party to power in 1895 he again became

Solicitor-General for Scotland. A year later he was appointed Lord Advocate, and in 1902 he vacated that office to become Secretary for Scotland. It was whilst occupying this purely political post that he was appointed to be the head of the Scottish Judiciary. Already, with Lord Haldane, Lord Loreburn, and Lord Shaw sitting regularly, the Supreme appellate tribunals have a strong Scottish element. The promotion of Lord Dunedin is an agreeable addition to it.

LORD JUSTICE HAMILTON, who has been chosen to fill the second additional Lordship of Appeal created by the Appellate Jurisdiction Act, has enjoyed a career of almost unexampled rapidity. Called to the Bar at the Inner Temple in 1885, he was created a Q.C. in 1901, appointed a Judge of the King's Bench Division in 1909, promoted to the Court of Appeal in 1912, and now, at the age of fifty-four, he has become a Lord of Appeal. The second son of Mr. Andrew Hamilton, a Manchester iron merchant, he was born in 1859, and was educated at Baliol College, Oxford, and is an Honorary Fellow of Magdalen. He read with Lord Mersey, with whom he edited the 1893 edition of 'Lee's Practical Digest of the Merchant Shipping Acts.' At the beginning of his professional career he practised locally at Manchester, but his success in those early days was not sufficiently marked to prevent him from entertaining an idea of seeking some means of livelihood other than at the Bar. It is said that it was Mr. Justice Mathew, before whom he subsequently acquired an enormous practice in the Commercial Court, who dissuaded him from abandoning the calling for which, both by natural talents and acquired knowledge, he was so eminently qualified. His name figured in the last list of Q.C.'s whose appointment was approved by Queen Victoria, and five other occupants of the Bench—viz., Sir Samuel Evans, Mr. Justice Scrutton, Mr. Justice Avory, Mr. Justice Horridge, and Mr. Justice Eldon Bankes—received the honour of 'silk' at the same time. The new Law Lord never took any active part in political life, though not long before his appointment as a King's Bench Judge his name became very familiar in political circles. He was appointed by the Board of Education to inquire into the attitude of the education authority toward Oxford Street Church of England School in Swansea. He found that the education authority had committed a default in its duties towards the school. His report was accompanied by a letter from the Welsh Department of the Board of Education throwing over his decision. This decision was the subject of severe criticisms in Parliament, and ultimately came before the Courts on proceedings of *certiorari* and *mandamus*, which were finally dealt with by the Court of Appeal, where it was decided that a *mandamus* should

issue to the Board of Education directing it to determine the issues. Sir John Andrew Hamilton is a graceful speaker with a gift of pretty wit, and the speech he delivered at the Hardwicke banquet in July, in which, in proposing 'The Bar,' he paid a warm tribute to the high qualities of Sir Rufus Isaacs, was an admirable specimen of his powers as a speaker in the lighter vein.

LORD JUSTICE PHILLMORE.

MR. JUSTICE PHILLIMORE, who has been appointed a Lord Justice, in the place of Sir John Andrew Hamilton, has been a Judge of the King's Bench Division nearly sixteen years, the only Judges of the Division who are senior to him, being Mr. Justice Ridley, Mr. Justice Darling, and Mr. Justice Channell. The only son of Sir Robert Phillimore, a Judge of the Admiralty Court and the author of standard works on ecclesiastical and international law, he was born in 1845, and was educated at Westminster School and at Christ Church, Oxford, where he took a first in classics and gained the Vinerian Law Scholarship. He was called to the Bar at the Inner Temple in 1868, became a member of the Western Circuit, was granted a Patent of Precedence in 1883 and acquired a large practice both in the Probate Divorce and Admiralty Division and in the Ecclesiastical Courts. Among the famous cases in which he was engaged was the Dilke divorce case, in which, with Mr. Justice Bargrave Deane, he appeared for the Queen's Proctor. He made three unsuccessful efforts to enter the House of Commons as a Liberal : in St. George's, Hanover Square, in 1885, and in the Henley Division of Oxfordshire in 1886 and 1892. Notwithstanding his Liberalism, he was appointed by Lord Halsbury a King's Bench Judge in 1897, and for several years past he has acted as Judge in Bankruptcy. On taking his seat in Court on the opening day of the sittings the new Lord Justice was congratulated by Mr. E. W. Hansell, who also expressed the sincere regret of counsel practising in the Court that they were to lose his Lordship as a Judge in Bankruptcy. His Lordship replied : 'Mr. Hansell and Gentlemen,—It is very kind and touching of you to say this. During the years that I have been the Judge in Bankruptcy I have always received the utmost courtesy and consideration and have been enormously helped by you and the gentlemen practising in the Bankruptcy Court. Of course I am not sorry to go to the Court of Appeal. But, apart from that, I must say that I am particularly sorry to leave my Bankruptcy work, which I have always found most interesting.' Sir Walter Phillimore has taken an active part in the work of the International Law Association, and was present

with Lord Justice Kennedy at the conference recently held by the Association at Madrid.

NEW PRESIDENT OF THE COURT OF SESSION.

Mr. Alexander Ure, who has been Lord Advocate since 1909, has been appointed Lord President of the Court of Session, in the place of Lord Dunedin. Mr. Ure, who has been in Parliament eighteen years, has held office ever since the present Government came into power in 1905, when he was appointed Solicitor-General for Scotland. As a platform speaker he has been one of the most strenuous of the Government supporters. He was born at Glasgow in 1853, his father being Lord Provost of the city. Educated at Glasgow and Edinburgh Universities, he was called to the Scottish Bar in 1878, and soon afterwards was appointed Lecturer on Constitutional Law and History in Glasgow University, a position he held for ten years. Some few years ago he declined the Secretaryship for Scotland because his ambitions lay in the direction of judicial work.—*Ibid.*

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Old Rules and New.—A striking instance of the Court's power to extend time for the doing of any act under the Rules was afforded by an application made to the full Court of Appeal on the first day of the sittings for leave to enter an appeal, although it was out of time under the old Rule, which was superseded by the new Order XXXIX coming into effect that day (*Evans and Lloyds Bank* v. *Thomas*). Under the old Rule a distinction was made between motions for the new trial of actions tried with a jury and motions for the new trial of cases tried by a Judge without a jury. In the former case Rule 4 of Order XXXIX applied limiting the time for service of notice of appeal to ten days after the trial, while in the latter case the motion was treated as being in all respects an appeal from a final judgment within Order LVIII., Rule 15, and, therefore, entitled to three months' time. The effect, therefore, was to put judgments after trial in jury cases on the same footing as interlocutory judgments or orders, while judgments in non-jury cases were in a more favoured position for the non-successful party, who was allowed the full time accorded to final judgments. Mistakes were frequent through this unequal treatment of cases according to the mode of trial, and the new Rules which came into operation on the first day of the sittings swept the inconsistency away by making the time for appeal in all cases six weeks after the trial, whether with or without a jury. In the case we are referring to, which came under the old Rule, the applicant's advisers had fallen

into the common error and given their notice long after the ten days allowed by the Rule had expired, but the Lord Chancellor, with the concurrence of all the other members of the Court of Appeal, decided to apply the principle of the new Rule, and exercising the plenary jurisdiction of the Court in matters of time allowance, directed that the appeal should be entered, notwithstanding that it was too late under the old Rule. It was a salutary exercise of the Court's power and a good instance of the value of a commonsense application of the Rules.—*Ibid.*

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Trespass and Improvement of Property.—There is no such thing as a 'meliorating' trespass. Meliorating waste may often afford no ground for an action, but a trespasser is not allowed to justify his entry on another man's land by showing that he has actually improved the property, as by making a building more secure. This important principle of law was illustrated in the case *Kirby* v. *Chessum,* tried befere Mr. Justice Avory and a jury last Tuesday. Building operations were being carried on by the defendants upon land adjoining the plaintiff's house. In the course of these operations the defendants removed the soil from under part of one of the walls of the plaintiff's house, and put in a foundation of brickwork and concrete. As a matter of fact the work was well done, and the stability of the house was increased, but the leave of the plaintiff was not asked. An action was therefore brought to recover damage for the trespass. It was urged on behalf of the defendants that the new foundation was necessary to prevent the wall from falling, and the recent case of *Cope* v. *Sharp* (1912) was cited. In that case damage to property was held justified by the necessity of extinguishing a fire. But the fire had not been caused by the defendant. In the present case the defendants themselves—the trespassers—brought about the necessity for the new foundation by their own action in first removing the soil. Mr. Justice Avory, in summing up, said that as a matter of law the defendants had not justified their trespass, and the question for the jury was what damage the plaintiff had suffered as owner of the house. The jury assessed the damages at 20*l.*, and they also found the danger to the plaintiff's house was not so imminent as to make the work done necessary without first obtaining the plaintiff's consent. It seems clear, as the evidence was that the stability of the house was actually increased, that these damages were given by way of punishing the defendants, and as sentimental damages to the plaintiff for the invasion of his rights of property. Even higher damages might

not unreasonably have been given in such a case of deliberate trespass.—*Ibid.*

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'*An Imperial Assize.*'—Lord Haldane appears to have been 'thinking aloud' at an educational function at University College, where he adumbrated a remarkable scheme for the future hearing of Colonial appeals, which the *Times* neatly sums up in its heading, 'An Imperial Assize.' The Lord Chancellor regards the House of Lords, as a judicial as well as a political chamber, as being *in articulo mortis*. What is to take its place? He says 'the great link of the Empire,' the Judicial Committee of the Privy Council—just as has been proposed for Irish disputes in the Home Rule Bill. But the work will be far too great for the Judicial Committee as it is at present constituted, so, as the King is 'not a local institution but an Imperial institution,' so his Privy Council ought to be regarded as an imperial body, and there is no reason why it should not be as much localised in the Dominions as it is localised in London at home. That way, it seems, we shall get a Court which 'will not offend against the canon which the self-governing Dominions desire to set up—that their Supreme Court of Appeal shall not be outside themselves.' But that does not entirely solve the problem. Having reduced the Judicial Committee of the Privy Council to an abstraction, to an institution without local habitation, there is no reason, it is said, why it should not sit in more than one division, so that it need not be sitting always in the same place but might move, if necessary, from time to time about the Empire. 'What more easy than to export some members from London from the Judicial Committee to go and sit as the King's Imperial Privy Council in Canada?' That is the meaning of the 'Imperial Assize.' It rather takes one's breath away. But we are glad to see that Lord Haldane does not commit himself to the scheme. We rather hope that he does not mean it.—*Ibid.* November 8, 1913.

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The Reduction of Sentences.—The precedent established last week in *Rex* v. *John Martin* has been followed this week by the Court of Criminal Appeal in a number of appeals. In that case, as was pointed out in this column, the Lord Chief Justice adopted a principle not formerly acted upon generally by the Court namely, that there should be, within reasonable limits, a certain proportion between length of sentence and value of goods stolen in cases of larceny irrespective of the prisoner's record, and that sentences which greatly exceed this proportion ought to be reduced upon

appeal. In *Rex* v. *James Connor* (November 3) the prisoner had been sentenced at the West Riding of Yorkshire Quarter Sessions to 18 months' hard labour for stealing a pair of boots; he had been convicted twenty times since 1888, and seven of those convictions were for larceny. When the present crime was committed he had been only four days out of prison. Such a record has hitherto been generally considered by judges as requiring a sentence of penal servitude; but the Court, applying the test of value, reduced the sentence to nine months' hard labour, Again, in *Rex* v. *John James McKone*, a sentence of three years' penal servitude passed at Sheffield Sessions after a conviction for receiving stolen goods—an offence usually treated with severity because it assists burglars to follow their avocation—was for similar reasons reduced to one of twelve months' hard labour. And in *Rex* v. *Charles Sanders*, where the prisoner had received a sentence of five years' penal servitude at Barnstaple Quarter Sessions, for obtaining goods by false pretences, the sentence was reduced to one of three years. Here, however, no novel principle was required, since, although the prisoner was an old offender, he had been living an honest life for the two years immediately preceding the crime—a fact which has already in several cases been held sufficient to justify a reduction of sentence (*Rex* v. *John Hill*, 2 Cr. App. R. 74; *Rex* v. *Cullen*, 4 Cr. App. R. 7; *Rex* v. *Benjamin Smith*, 4 Cr. App. R. 48).—*Ibid.*

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Criminal Responsibility of Parents.—A commonsense view as to the possibilities of parental control led the Court to quash the conviction in *Rex* v. *Alfred Chainey*. The prisoner, an engine driver whose employment kept him from home, had a daughter under sixteen years of age who associated with women of immoral character. Her mother, a drunkard, did not prevent her doing so, and although her father, when at home, reproved and threatened the girl for her misconduct, she continued such association. The father was thereupon indicted and convicted, under section 17 of the Children Act, 1908 (as amended by the Children Act (1903) Amendment Act, 1910 sec. 1), for 'knowingly allowing' the girl to consort with persons of known immoral character. The prosecution supported their case on the ground that the father, if unable himself to control the girl, should have placed her in a home or brought another woman into the house to take care of her! These suggestions the Court of Criminal Appeal, having regard to prisoner's rank in life, rightly regarded as utterly impracticable and unreasonable.—*Ibid.*

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New trial of acquitted persons.—Although in India the Penal Code permits in certain cases the retrial of persons who have been acquitted by a competent tribunal, and even the conviction and execution of such persons for a capital offence, the Common Law of England has always leant strongly against the introduction of such a principle into our criminal procedure. The maxim *Nemo bis vexari debet*, indeed, not only saves an acquitted person from the oppression of a new trial, but also protects in the same way a person who has been convicted but whose conviction has for technical reasons been quashed, provided he has been once in peril. An acquitted person in such cases can always successfully plead *autrefois acquit*; and the rule on this point was clearly laid down by Lord Chief Justice *Coleridge* in the leading case of *Regina* v. *Duncan* (7 Q.B.D. 198). 'The practice of the Court,' he said in a famous passage, 'has been settled for centuries, and is that in all cases of a criminal kind where a prisoner or defendant is in danger of imprisonment, no new trial will be granted if the prisoner or defendant, *having stood in that danger*, has been acquitted.' These words seem clear, as well as comprehensive; but the words we have italicised have raised a doubt in two cases. In *Regina* v. *Galway Justices* (No. 2), [1906] Irish Reports II., 499), where a prisoner had been tried and acquitted before a tribunal consisting of Justices against whom bias was alleged, it was suggested that, owing to the existence of such bias in his favour, he never had 'stood in danger' of conviction; but the Court refused to attach any such limitation to the principle. So in *Rex* v. *Simpson and others exparte Smithson* (October 23), where two miners accused of contravening section 74 of the Coal Mines Act, 1911, by disobeying the directions of the certificated manager of their colliery, were acquitted by a Yorkshire Petty Sessional Court which included among the Justices who heard the case two persons employed or interested in mines, and therefore disqualified from hearing such cases, under section 103 (2) of the Coal Mines Act, 1911, it was argued that this disqualification deprived the bench of jurisdiction and so made the trial a nullity. In the Irish Case the proceedings were challenged on the ground of bias, which only makes them voidable, not void *ab initio*; whereas, in this case, the alleged lack of jurisdiction in the bench because of disqualification would make the trial void *ab initio*. The Divisional Court, however, reaffirmed the broad principle that after an acquittal, no new trial will be granted, whether the technical defect makes the proceedings wholly void or merely voidable.—*Ibid.*

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The fact that Hamilton, L. J., the new Lord of Appeal, at one time nearly abandoned his career at the Bar, as for several years he had so little practice, may afford no little food for reflection, and some consolation for students and not a few practitioners. It was lord Justice Mathew who recognised his abilities, and induced him to reconsider his decision, with the result that before he took silk in 1901 he had acquired a large practice. He is 54 years of age, and was an undergraduate of Balliol, and is an honorary Fellow of Magdalen. He was appointed a Judge of the King's Bench Division in 1909, and a Lord Justice in 1912.—*The Law Student's Journal.* November 1913.

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In Georgia they tell of a prisoner who had been convicted a dozen times of stealing, who, when placed at the bar for his latest offence, displayed a singular curiosity.

"Your honor," said he, "I should like to have my case postponed for a week. My lawyer is sick."

"But," said the magistrate, "you were caught with your hand in this gentleman's pocket. What can your counsel say in your defence?"

"Exactly so, your honor; that is what I am curious to know." —*National Corporation Reporter.*

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The *Westminster* gave, one night, some interesting remarks on the circumstances under which some of the old "Chiefs" were selected. When Lord Kenyon died the wags declared that the cause of death was his habit of eating apple-pie crust at breakfast to save the expense of muffins, and that Ellenborough, who succeeded, ever after bowed with great reverence to apple pie. Lord Tenterden owed his appointment to the fact that the Attorney-General of the day was too deaf to take the position. Strangest of all was the case of Chief Justice Wright. He was a boon companion of Jeffreys, who said to him: "As you seem unfit for the Bar, or for any other honest calling, I see nothing for it but that you should become a judge yourself."—*Law Notes.* November 1913.

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Lawyers and the Devil:—In the Canadian Law Times for September, Mr. Courtney Kenny tells us of a familar Italian legend about the Advocate who when turned blindfold into a Church to select for himself and his brethren a patron saint, stumbled over the

base of the statue of the victorious St. Michael, and clutching the defeated and prostrate fiend, cried "Here is our patron."

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Law library purposely destroyed.—A law library worth several hundred dollars was burned to-day by D. A. Yearger, state representative of the American Law Book Co. This library was purchased by Welza G. Fairchild of this city from the American Law Co., of New York, publishers of the well known authoritative work—Cyclopedia of Law and Procedure, commonly called "Cyc." Mr. Fairchild contracted tuberculosis and had paid but S. 20.00 on account of the S. 365 (contract price of Cyc. and Home Edition of the same) when he was forced to seek a climate suited to the disease from which he was suffering.

The owners of the library have strictly held to the policy never to rebind and sell a set of their work when the set has been used by a subscriber suffering from consumption. In accordance with their rule the library was burned, thereby effectively preventing dissemination of the dreaded disease as the tubercle bacillus, or germ, cannot withstand such treatment.

CONTEMPORARY LEGAL LITERATURE.

In the *American Law Review* for September-October, Mr. W. M. Blatt advances the theory that changes in the form of law are largely the result of group balancing in the economy of state, of the ruling group, the nobles, the subject class the middle class, the clergy, the merchants and lastly the local interests. Each group has a peculiarity of its own. The ruling group is inspired by what Nietzche calls master morality, the subject class by what he calls the slave morality. Through the middle class it is that most of the legislative safeguards of fairdealing have come. Extremes in laws controlling vice, irreligion and radicalism can usually be traced to the influence of the clergy. The merchant group is the prime factor in all legal changes looking to convenience in conveying property, the protection of employers of native industries and of commerce generally. The merchant differs from the typical middle class citizen in the lack of an inherent love of honest principles. The loose corporation laws which invite fraudulent representations of capital and the evasion of taxes are satisfactory to most merchants. The pure food laws are almost unanimously execrated by them. "In fact" says the writer "Mercury still remains the god of merchants, liars and thieves." The pressure of the lowest or subject class is very

slight compared with its numerical strength. The labor group has recently been acquiring strength. The pressure of local interests is generally fruitful only of political corruption. Foreign pressure opposes itself to the labor group which resents importation of labor from outside. Ambition, hunger, climate, geography, education and a thousand and one details affect each class and sometimes all classes but all such forces, before affecting law, must be converted into the form of energy which has been described above.

Dr. Baty dwells in another article upon the silent revolution that is going on in English Criminal Procedure which has introduced into the English system the dangers of the inquisitional system of the Continent with none of its safeguards. This is due to the Criminal Evidence Amendment Act which permits the accused to give evidence on his own behalf. The Judges look upon the failure of the accused to give his own explanation with suspicion and have begun to insist upon his disclosing his defence at the earliest stage possible. It has led the Police to take to cross-examining the accused, though many judges have strongly condemned the practice. The view that the accused must disclose his defence early works a peculiar hardship on the accused in that the prosecution is under no such obligation. The change in the attitude of judges is partly due to their looking upon the Magistrates as regular tribunals which they are not.

Another writer in the same journal pleads for greater security of judicial tenure in the various States of America. As it is, in most of the States, the judicial tenure is very short and the office being elective, the judges can hardly be counted upon to judge aright in matters in which popular prejudice runs high. Any way, the strain upon the judge's impartiality is very great. There is besides very little time for judges to pick up experience. In the Federal Courts, the principle of life-tenure prevails as in England and has been found to work very satisfactorily.

A writer in *The Canadian Law Times* for September puts together a lot of curious learning as to execution and delivery of deeds. Lord Coke enumerates no less than ten essentials to a valid deed. But some of the essentials concern the subject matter of the transaction rather than the requirements of a valid deed. Among the essentials mentioned by him are writing on paper or parchment, sealing and delivery. Neither signing nor attestation is necessary for the validity of a deed. The necessity for delivery is illustrated by the story of a man who hit upon the plan of having the

terms of a deed inscribed on his back but was dissuaded from doing so by his legal advisers who told him that a deed was not valid without delivery. What amounts to delivery has been the subject of much discussion. Though mere affixing the seal is not sufficient, any acts or words which to show that the party intended to be bound by it is sufficient. Sometimes delivery is merely confirmatory that is when the act constituting delivery takes place sometime after the deed are drawn up. It occurs where there has been some defect in the original execution which makes it not binding against a party. This is called redelivery. Redelivery is acknowledgment by the party sought to be bound that the document is binding against him. Excepting the recent case of (1913) 1 Ch. 489, all have been cases of alienations for consideration where deeds have been upheld on the ground of re-delivery. The case referred to carries the matter a step further and applies the principle to gifts.

This issue of Candian Law Times contains also an address of Sir Frederick Pollock on Judicial Records. The lecture after discussing the way in which records are kept in England dwells upon their historical value and contrasts the methods of pleading in Bracton's time with those in later times up to the present. The Professor thinks that there is more approximation in the methods of the 13th century and the 20th than of the 18th and the 20th. For twenty years the original records are kept in the vaults of the Royal Courts; afterwards they pass into the custody of the Master of the Rolls. We have at the Record office, records of suits for the last 700 years and more. The late Master of the Rolls—Sir George Jessel committed himself to the statement that the Court of Chancery was not a Court of Record. The reason assigned by him was that the records of that Court were not in the custody of the Lord Chancellor but of the Master of the Rolls The Professor thinks that the Master of Rolls was doubly wrong: *first* because the Master of the Rolls acts only as the Deputy of the Lord Chancellor; *secondly* because the test for determining whether a Court is a Court of Record is not that the judges keep their own record but that the record itself is the only authentic and conclusive proof of what the Court has done.

This issue contains also a learned discussion of what "nexum" in Roman Law meant, whether Niebuhr's theory or Huschke's theory is to be preferred or a third one which the writer puts forward is the true solution of the difficulty.

BOOK REVIEWS.

The Current Statutes (1913) complied by C. S. Somanatha Shastry, B. A. B. L. and P. Ramanatha Iyer B.A. B.L,. First grade Pleaders, Published by the Lawyer's Companion Office. We have no doubt that this publication will be felt a useful addition to every lawyer's library. In it, the enterprising editors promise to print in one place British Statutes relating to India, Acts of the various legislatures in India (with Select Committee's reports) and notifications, rules and orders under the various Statutes and Acts. It will serve to keep the lawyers up-to-date in their information as to the exact state of the law in any given part of India. Its value to the comparative study of Indian law can hardly be over estimated. For the volume of matter (one was hardly aware of the full extent of the legislative activity going on in India) the price is moderate.

The Indian Decisions (*New Series*) *Madras*.—By the Lawyer's Companion office. This brings us up to the end of the 7th Volume in the Madras Series.

Hindu Woman's Estate (*Non-Technical Stridhana*) by Bhagawan Das Sirvya, B.A., L.L.B. Published by Butterworth and Co. (1913) : We are not certain that the heading of the book is quite accurate but a quarrel on that ground would be purely academic. The subject dealt with is Hindu Woman's Limited Estate. The book presents a full and careful analysis of the case law on the subject with not uninteresting discussions on the original authorities. The introductory chapter is positively interesting though many might not agree with the author's views as to the history of the growth of Woman's rights in India. Those that have a taste for the curious will find at the end of the book an explanation by figures of the leading principles of the law. We must confess we have no taste for them. We consider all such things whether in the hands of a writer on Economics or in those of a Hindu law writer, equally fantastic and not of much profit. We would have liked the author to give the original Sanskrit wherever there was occasion for the citation of texts. We should also protest against such vulgarities (we consider them nothing less) as Narad, Gotam, and Parasar, But these are small matters. On the whole, the work is well done. The various ways in which a woman's estate may be acquired, the nature of the estate, the power of women in the management and

disposal of the estates in their possession, the rights of the reversioners, limitation for their suits, presumptions that avail for and against them, evidence to be tendered in suits and the equities that have to be considered are all so well and fully dealt with that we have little doubt that the work will be very popular with the profession.

The Law of Land Acquisition and Compensation in British India by Walter Russel Donogh, M. A., (1913) published by Messrs. Thacker Spink & Co.

The book as its title shows is a comprehensive one dealing with compulsory land acquisition by the state generally and not merely the Land Acquisition Act, though the main topic is the Act. The history of the legislation as to land acquisition is given in the introductory chapter and in the appendix the proceedings of the Legislative Council and the report of the Select Committee etc., are given. The value of these to the practitioner and the judge is very great though in strict theory, judges are not entitled to look into them. Relevant English decisions—as the provisions of the Indian Act run close to the English Act, they are many, are cited under appropriate sections. All relevant Indian decisions also are noted. The non-official journals no less than official journals have been consulted. The notes are full and clear without being verbose. Altogether the book is a creditable performance and is in every way worthy of the reputation of the author which deservedly stands high with the profession. The get up is lovely.

Indian Decisions (New Series) Vol. 9 by Law Printing House, Madras. This brings us up to Vol. 22 in the Allahabad series, that is to say, all the Volumes in that series, for which this enterprising firm got permission have been printed. We hope—judging from the past, we have every reason to believe, the other series also will be completed very shortly.

Hindu Law by C. S. Ramakrishna, B.A. B. L., in 2 Vols:—Hindu Law has been interpreted in such a mass of case-law, interpreted out of shape and recognition as some say—but that is another story—that reference to original authorities is a necessity only in rare cases. So that, the lawyer's desideratum now is more an accurate analysis of the case law as it stands at present and an